



REVIEW OF
CAREGIVER SCREENINGS

**From The Office Of State Auditor
Claire McCaskill**

Report No. 2000-23
April 12, 2000

AUDIT REPORT



Office Of The
State Auditor Of Missouri
Claire McCaskill

April 2000

The following areas of concern were discovered as a result of a review conducted by our office of Care Giver Screenings.

Our elderly, children and mentally challenged often do not have the capability to fully protect themselves from abuse and neglect. Various state agencies maintain listings of individuals who have been found to have abused or neglected children, the elderly, or the mentally challenged. We matched individuals on these listings to 1998 employment information and noted instances of illegal, inappropriate, or questionable employment situations. While several state agencies utilize these listings to some degree, no agency has developed an automated match to identify employers who were not performing the required screenings or who employ individuals contrary to guidelines. Except for recent legislation regarding certain child care workers, there currently are no laws which require these state agencies to screen for persons being employed inappropriately or illegally. Instead the laws either require certain employers to perform background checks, or simply state that certain employment situations are illegal. Also, most of the inappropriate or questionable employment situations identified in our report are not currently unlawful.

One of the goals of the Family Care Safety Act, and the Governor's Executive Order 99-05, both enacted in 1999, was to promote family and community safety by allowing access to comprehensive information accumulated by various state agencies.

We also noted that screenings will not require that the history of child and elder care workers be checked against information from other states, and will not require employees in schools to be checked against the listings of abusers. Finally, it will be an onerous task for individuals selecting personal care services to check backgrounds of employees of large providers and providers with high employee turnover.

Additional controls and procedures should be put into place to fully protect the elderly, children, and mentally challenged. These include:

- Placing all disqualified individuals (and their social security number) from the Division of Aging Employee Disqualification Listing, the Department of Mental Health Employee Disqualification Listing, as well as individuals who have been determined to have committed a serious child abuse or neglect incident, in a single abuse registry.

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YELLOW SHEET

- Passing legislation which prohibits these individuals from being employed by care providers and schools.
- Implementing the necessary system improvements to allow for more timely background screening results.
- Requiring care providers and schools to check the abuse registry **prior** to employment of new individuals.
- Developing an automated process to periodically identify all instances of individuals inappropriately working for care providers and schools.
- Developing procedures to remove those individuals from inappropriate workplace settings.
- Developing procedures to aggressively fine and sanction care providers and schools who employ individuals listed on the abuse registry.
- Developing procedures so that family members can more easily and conveniently determine whether a particular care provider or school is employing individuals listed on the abuse registry. Consideration should also be given to what extent information on the registry should be available to the public.
- Requiring the backgrounds of Family Care Safety Registry registrants who have not resided in Missouri for the preceding three years be checked against information in the registrant's former state of residence. In addition, the state should promote the establishment of a national screening system.
- Establishing a fair and consistent appeal process which considers the nature and severity of the incident which resulted in placing an individual in the abuse registry, and the results of any subsequent rehabilitation.
- Passing legislation to clearly allow background information to be disclosed to state agencies responsible for monitoring provider compliance.

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STATE AUDITOR'S REPORT



CLAIRE C. McCASKILL
Missouri State Auditor

Honorable Mel Carnahan, Governor
and
Members of the General Assembly

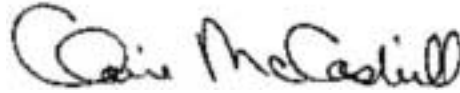
We conducted a review of state agencies' practices and procedures and of state legal provisions regarding care giver screenings. The objectives of this review were:

1. To determine whether persons who have abused the elderly, clients of the Department of Mental Health, and/or children are employed in illegal, inappropriate, or questionable work settings.
2. Review and evaluate various state agencies' compliance with certain executive orders and statutory requirements regarding care giver screenings.
3. Review certain state laws relating to abuse against persons and determine areas of concern needing improvement or clarification.
4. Review certain management controls and practices to determine the propriety and effectiveness of those controls and practices as they relate to care giver screenings.

Our review was made in accordance with applicable generally accepted government auditing standards and included such procedures as we considered necessary in the circumstances. In this regard, we reviewed applicable executive orders, state laws, interviewed or surveyed applicable personnel, and inspected relevant records and reports.

Our review was limited to the specific matters described above and was based on selective tests and procedures considered appropriate in the circumstances. Had we performed additional procedures, other information might have come to our attention that would have been included in this report.

The Comments, Analysis, Conclusions, and Recommendation presented in the report represent the results of our review of care giver screenings.

A handwritten signature in dark ink, appearing to read "Claire McCaskill". The signature is fluid and cursive, with the first name "Claire" being more prominent than the last name "McCaskill".

Claire McCaskill
State Auditor

December 6, 1999 (fieldwork completion date)

The following auditors participated in the preparation of this report:

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EXECUTIVE SUMMARY

REVIEW OF CARE GIVER SCREENINGS EXECUTIVE SUMMARY

Our elderly, children, and mentally challenged often do not have the capability to fully protect themselves from abuse and neglect. Various state agencies maintain listings of individuals who have been found to have abused or neglected children, the elderly, or the mentally challenged. We matched individuals on these listings to 1998 employment information and noted instances of illegal, inappropriate, or questionable employment situations. While several state agencies utilize these listings to some degree, no agency has developed an automated match to identify employers who were not performing the required screenings or who employ individuals contrary to guidelines. Except for recent legislation regarding certain child care workers, there currently are no laws which require these state agencies to screen for persons being employed inappropriately or illegally. Instead the laws either require certain employers to perform background checks, or simply state that certain employment situations are illegal. Also, most of the inappropriate or questionable employment situations identified in our report are not currently unlawful.

One of the goals of the Family Care Safety Act, and the Governor's Executive Order 99-05, both enacted in 1999, was to promote family and community safety by allowing access to comprehensive information accumulated by various state agencies. Our review of this legislation and the executive order noted background screenings will not be totally comprehensive. We also noted that screenings will not require that the history of child and elder care workers be checked against information from other states, and will not require employees in schools to be checked against the listings of abusers. Finally, it will be an onerous task for individuals selecting personal care services to check backgrounds of employees of large providers and providers with high employee turnover.

COMMENTS, ANALYSIS, CONCLUSIONS, AND RECOMMENDATION

REVIEW OF
CARE GIVER SCREENINGS
COMMENTS, ANALYSIS, CONCLUSIONS, AND RECOMMENDATION

COMMENTS AND ANALYSIS

1.	Data Match and Agency Procedures
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Various sections of state law require the Division of Aging (DA) to maintain an Employee Disqualification Listing (EDL) which includes names of persons who have been finally determined by the department, pursuant to Section 660.315, RSMo 1994, to have recklessly, knowingly, or purposely abused or neglected, or to have misappropriated any property or funds of a nursing home resident or in-home services client. Section 660.315.11, RSMo 1994, establishes who will be provided the DA EDL.

There are approximately 700 persons on the DA EDL. Nursing homes and residential care facilities, providers of in-home services under contract with the Department of Social Services (DSS), employers who hire nurses and nursing assistants for temporary or intermittent placement in health care facilities, entities approved to issue certificates for nursing assistants training, hospitals and related health services, and home health and hospice providers are prohibited by state law from employing any person on the DA EDL.

The Department of Mental Health (DMH) maintains a listing of persons who have been administratively determined to have abused or neglected a DMH client under Section 630.167, RSMo Cumulative Supp. 1999. Pursuant to Section 630.167, RSMo Cumulative Supp. 1999, this listing is confidential. There are about 250 persons on this listing. Persons on the listing are disqualified by 9 CSR 10-5.200 from holding any position in any public or private facility or day program operated, funded, or licensed by the DMH or in any mental health facility or program.

The Division of Family Services, under Section 210.145, RSMo 1994, maintains a Central Registry of individuals where the division has found probable cause to believe or a court has substantiated through court adjudication that the individual has committed child abuse or neglect, or the person has pled guilty or has been found guilty of a crime under Sections 565.020, 565.021, 565.023, 565.024, or 565.050, RSMo. The Central Registry of Child Abuse and Neglect (CA/N) contains identifying information on the perpetrators of child abuse and neglect. Pursuant to Section 210.150, RSMo 1994, this listing is confidential.

- A. We obtained the listing of persons on the DA and DMH EDLs. We also obtained a listing of all persons listed in the CA/N for which the incident date was within the last five years. We further limited our selection criteria to the investigation conclusion codes of A (court adjudicated) or B (probable cause or reason to suspect); the severity codes of C (serious/severe), D (permanent injury), or E (fatal); and the categories of abuse of 1

(physical abuse), 2 (neglect), or 6 (sexual maltreatment). Applying that selection criteria to the CA/N, about 16,700 persons were identified, of which approximately 14,350 included a Social Security number of the person. We matched persons from the EDLs and the CA/N against 1998 employment information records and noted the following instances of illegal, inappropriate, or questionable workplaces:

Employment Area	People on each listing employed in the applicable area		
	CA/N	DA EDL	DMH EDL
Nursing Home	1,009	12 *	15 **
In-Home, Home Health, and Residential Services	274	10 *	7
Daycare	249	19	3
Hospital	191	10 *	5
Individual and Family Social Services	159	0	2
Schools	120	13	5
Job Training and Vocational Rehabilitation	48	0	1
Foster Care	9	1	0
Total	2,059	65	38

* Employment is currently prohibited by state law.

** 11 of these are also DMH providers and therefore employment is currently prohibited by state regulation.

In total, we identified thirty-two people that were employed in areas that were prohibited by state law. In addition, many of the 249 individuals listed in the CA/N Registry that were employed in the daycare area are now subject to restrictions under legislation which became effective August 28, 1999. We identified 1,870 instances in which people that abused or neglected the elderly, clients of the DMH, or children, were employed in potentially inappropriate or questionable work settings.

- B. As noted above, approximately 2,350 of the 16,700 persons listed (using our criteria) on the CA/N did not include a social security number. Considering social security numbers will be required in any computer matches to be performed, procedures should be improved to ensure social security numbers are entered for all individuals listed in the CA/N.
- C. State agencies utilize these EDL listings and the CA/N to varying degrees as follows:
 - C The DA performs quarterly checks of employment records for twenty-five percent of the persons on their EDL. Also, during inspections, inspectors review personnel

files on a test basis to determine if providers checked the DA EDL before employment.

- C During inspections of mental health facilities, DMH inspectors review personnel files on a test basis to determine if the provider checked the DMH EDL.
- C The Division of Family Services screens Foster Care providers against the CA/N. Foster Care providers with substantiated instances of child abuse or neglect are sometimes allowed to continue in the Foster Care program if deemed appropriate following a team review or determination of each case. The DFS also has begun screening new registered day care providers against the CA/N and it performed an automated match to screen existing registered day care providers against the CA/N. However, that match did not identify at least 38 instances in which a registered day care provider was listed in the CA/N. A specific cause for these instances being missed by DFS could not be determined. The DFS has no plans to perform periodic matches in the future, but intends to screen for providers in the CA/N at the local level upon completion of a probable cause determination.
- C The Department of Health (DOH) has screened applicants for day care licensure against the CA/N. Also during inspections of day care facilities, inspectors review personnel files on a test basis to determine if the provider checked the CA/N. If an applicant or day care employee is identified as being listed in the CA/N, the DOH reviews each case on an individual basis and, if deemed appropriate, allows the provider or employee to continue providing day care.

Instances of illegal employment noted during our review were referred to the appropriate state agency. While several state agencies utilize these listings to some degree, no agency has developed an automated match to identify providers who were not performing the required screenings or who employ individuals contrary to guidelines. Except for recent legislation regarding certain child care workers, there currently are no laws which require these state agencies to screen for persons being employed illegally. Instead, the laws either require certain providers to perform background checks, or simply state that certain employment situations are illegal. Also, many of the inappropriate or questionable instances identified above are not currently unlawful.

2. Family Care Safety Act and Executive Order 99-05
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The Family Care Safety Act, passed by the 90th General Assembly in 1999, requires the DOH establish the Family Care Safety Registry (FCSR) by January 1, 2001. This Act is included in Section 210.900 through 210.936, RSMo Cumulative Supp. 1999. Every child care and elder care worker hired on or after January 1, 2001 must file a registration form with the DOH. Registrants will be screened against criminal records, the CA/N registry, the DA EDL, and foster

parent denials, revocations, and suspensions. The Act also requires the DOH to establish a toll-free telephone service. Persons contemplating placement of an individual in a child or elder care setting may obtain information from the registry regarding individuals registered in the FCSR. Callers may find out only if the individual is in the registry and for what background check they are listed. Under the law, the DOH is required to notify the registrants listed in the FCSR of the name and address of inquirers. The DOH is also required to report to the General Assembly by January 1, 2001 on its recommendations regarding various issues applicable to the FCSR.

On March 31, 1999, the Governor signed Executive Order 99-05. The goal of the Executive Order was to provide Missouri families with a more comprehensive and streamlined access to information on individuals who have a history of abuse and neglect. Under this order, individuals can submit a single form to obtain information related to whether a caregiver is included on either the DA or DMH EDL, the CA/N registry, or has a criminal background. However, due to the state's existing confidentiality laws, the signature of the caregiver must be obtained prior to disclosure of information related to the EDLs and CA/N registry. In addition, two state agencies and one industry association expressed concerns that current screenings take two weeks or longer to complete resulting in substantial delays before an individual could be hired. Another state agency suggested a real-time interface between the various state agencies to allow for more timely background screening results.

Our review on the Family Care Safety Act and Executive Order 99-05 noted the following concerns:

- A. The FCSR will not be a comprehensive listing of potentially inappropriate or abusive individuals identified by state records. Except for some childcare workers, only workers entering employment on or after January 1, 2001 will be entered into the FCSR. As a result, many of the people currently on various listings (noted in part 1 above) would not even be listed in the FCSR. In addition, the Act does not require the Registry to check against individuals listed on the DMH EDL.

One of the goals of the Family Care Safety Act was to promote family and community safety by allowing access to comprehensive information accumulated by various state agencies. Obviously, by not including current care givers within the FCSR, and not checking against individuals who have been determined to have abused clients of the DMH, the goals of the Act cannot be fully achieved.

- B. The FCSR will not check registrants against information from other states. As a result, care workers who are disqualified in other states could come to Missouri and continue in similar employment without detection.

The State of Wisconsin has laws in effect which require that the backgrounds of registrants who have not resided in that state for the preceding three years be checked against information in the registrant's former state of residence. Current caregiver background

screening already requires registrants to disclose addresses for the previous three years.

- C. Under the Act, individuals will be able to check whether potential care givers are listed in the FCSR and use this information in determining their placement decisions. Under the Executive Order, individuals can currently find out whether caregivers are on the C/AN registry or either the DA or DMH EDL, but must obtain the caregiver's signature and approval before obtaining this information. These processes may work well for smaller care providers with low turnover of employees. However, it would be an onerous task to expect individuals selecting personal care services to screen for numerous employees at large care providers, such as a nursing home, large day care provider, or Home Health Agency. Also, staff turnover is often high for these types of employment. It would not appear feasible to expect individuals to constantly check new hires against the FCSR.

The State of Wisconsin may refuse to license, certify or register a care giver who has failed the background check.

- D. The Department of Elementary and Secondary Education (DESE) performs criminal background checks of teachers as required by Section 168.071, RSMo Cumulative Supp. 1999. However, the DESE is not required to screen school district employees against the CA/N, the DA EDL, or the DMH EDL.

Missouri's public schools should at least consider whether individuals who have been found to have abused or neglected children, elders, or the mentally ill should be allowed to work in our public schools.

- E. Another state agency noted the Act allows to disclosure of background information for employment purposes only. The Act does not address whether information can be disclosed to state agencies responsible for monitoring provider compliance. For example, there is no specific allowance for a licensing state agency, such as the DA when inspecting nursing homes, to obtain and have access to information in the FCSR. To avoid any duplication of effort between state agencies, and to help ensure that providers take appropriate action when an employee fails a background check, these state agencies should be allowed access to information in the FCSR.

CONCLUSIONS

Additional controls and procedures should be put into place to fully protect the elderly, children, and mentally challenged. These include:

- C Placing all disqualified individuals (and their social security number) from the DA EDL, the DMH EDL, as well as individuals who have been determined to have committed a serious child abuse or neglect incident, in a single abuse registry.

- C Passing legislation which prohibits these individuals from being employed by care providers and schools.
- C Implementing the necessary system improvements to allow for more timely background screening results.
- C Requiring care providers and schools to check the abuse registry **prior** to the employment of new individuals.
- C Developing an automated process to periodically identify all instances of individuals inappropriately working for care providers and schools.
- C Developing procedures to remove those individuals from inappropriate workplace settings.
- C Developing procedures to aggressively fine and sanction care providers and schools who employ individuals listed on the abuse registry.
- C Developing procedures so that family members can more easily and conveniently determine whether a particular care provider or school is employing individuals listed on the abuse registry. Consideration should be given to what extent information on the registry should be available to the public.
- C Requiring the backgrounds of FCSR registrants who have not resided in Missouri for the preceding three years be checked against information in the registrant's former state of residence. In addition, the state should promote the establishment of a national screening system.
- C Establishing a fair and consistent appeal process which considers the nature and severity of the incident which resulted in placing an individual in the abuse registry, and the results of any subsequent rehabilitation.
- C Passing legislation to clearly allow background information to be disclosed to state agencies responsible for monitoring provider compliance.

RECOMMENDATION

Since many of the conclusions noted above require statutory revisions through additional legislation, **WE RECOMMEND** the General Assembly consider the contents of this report when enacting future legislation that addresses the safety and protection of Missouri's children, elderly, and mentally challenged.

This report is intended for the information of applicable government officials. However, this report is a matter of public record and its distribution is not limited.